IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2528 of 1984
WITH
CIVIL APPLICATION No 236 of 1986
WITH
CIVIL APPLICATION No 237 of 1986

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALEMBIC GLASS INDUSTRIES LTD.,
Versus
UNION OF INDIA

Appearance:
M/s.TRIVEDI AND GUPTA for Petitioners No. 1-2
MR MR SHAH for Respondents No. 1-3
RULE SERVED for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The petitioner, a limited company, has challenged under Articles 226 and 227 of the Constitution of India, two orders dated 11/5/1984 and 14/5/1984, whereby the approved price list and the approval of revised ground plan was cancelled respectively by the Assistant Collector, Central Excise, Division-III, Baroda. The petitioner has further challenged consequential show cause notices dated 21/5/1984, 10/8/1984, 11/10/1984 and 29/10/1985.

2 The petitioner Company carries on business of manufacturing glasswares and also carries on process of colour printing and decorating glassware. It appears that based on trade notice No.MP/24/80 dated 8/2/1980 which in terms was based on tariff advice 2/80 dated 4/1/1980 the petitioner company took up a stand that the activity of decorating glassware in a separate factory would not amount to manufacture and as such value in relation to the said process would not be includable for the purpose of computing of duty. Accordingly, the printing unit was separated from the main manufacturing unit pertaining to plain glassware and revised ground plan was placed before the authority on 18/5/1983. On 1/6/1983 the petitioner company obtained separate licence under The Factories Act,1948 for the decorating unit. On 2/6/1983 the revised ground plan was approved by the authority and on 7/7/1983 the fresh price list was provisionally approved with effect from 3/6/1983. It appears that the authority carried out inquiry regarding fresh price list and finally approved the same on 7/10/1983.

3 On 11/5/1984 the same authority who had approved the price list and the revised ground plan cancelled the approval of the price list and on 14/5/1984 followed by cancelling the approval of revised ground plan.

4 Mr.Gupta appearing on behalf of the petitioner contends that in light of the Apex Court's decision in case of Union of India vs. J.G.Glass Industries Ltd., 1998(97)E.L.T.5 the case of the petitioner company was covered and in the said decision it has been specifically held that no duty or differential duty would be payable again in relation to printing and decoration done in the

separate premises. Pointing out from the facts of the case which was before the Supreme Court it was submitted that the case of the petitioner was covered on all fours as the petitioner company also has separate unit operating since 1983 under separate factory licence.

5 Mr.M.R.Shah, learned Standing Counsel appearing on behalf of the respondent contended that the case of the petitioner was different on facts from the one before the Apex Court in as much as the petitioner company was one company and merely because it had different manufacturing units it should not be contended that they were separate units. Elaborating on the contention it was submitted that the petitioner company had common staff, common management which went to show that there was no separate unit in operation as contended by the petitioner.

6 Having heard both the sides we find that the case of the petitioner requires to be accepted for the reason that the case stands concluded by the ratio of the aforesaid decision in case of J.G.Glass Industries Ltd. Furthermore, as can be seen from subsequent show cause notices issued on 21/5/1984, 10/8/1984, 11/10/1984 and 29/10/1985, the said notices pertained to period during which the goods were cleared under approved price list and this aspect has not been disputed on behalf of the respondent. Only in relation to the last show cause notice dated 29/10/1985 it has been contended on behalf of the respondent that it pertains to period beyond the period for which the approved price list existed. In relation to the said notice in light of Section 11A of the Central Excise Act, it is apparent that the authority would be required to proceed within the period of limitation viz. six months from the relevant date and in the present case in relation to show cause notice of 29/10/1985, the limitation period would be the end of April,1985. However, this aspect of the matter need not be gone into in light of the fact that the issue stands concluded in favour of the petitioner by the decision in case of J.G.Glass Industries Ltd.(Supra).

7 The orders dated 11/5/1984 and 14/5/1984, respectively, are therefore quashed and set aside. As a result, all consequential proceedings like the impugned show cause notices and pursuant orders are also quashed and set aside. Rule made absolute. There shall be no order as to costs.

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In light of the order passed in main petition no separate orders are required to be passed in these Civil Applications. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.M.Dharmadhikari, C.J.)
Sd/-
(D.A.Mehta, J)

m.m.bhatt